UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
JUL 26 1993
Clerk, U.S. District Court
Central District of California
By _____ Deputy

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

SANTA ANA CITY EMPLOYEES ASSOC., et al.,
Plaintiffs,
vs.
CITY OF SANTA ANA, et al.,
Defendants.

No. CV 91-0212-RMT (Ex)

ORDER GRANTING MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT ON DEFENDANTS' CLAIMS OF QUALIFIED IMMUNITY

This matter having come before the court for hearing on July 19, 1993, on the motion by plaintiffs Santa Ana City Employee Association and Barbara Lambert for summary judgment on defendants' claims of qualified immunity, and the court having considered the pleadings and other documents filed herein and argument of counsel, and having filed findings of fact and conclusions of law concurrently herewith,

IT IS ORDERED that the motion by plaintiffs Santa Ana City Employees Association and Barbara Lambert for summary judgment on defendants' claims of qualified immunity is granted.

Dated: 7/26/93

/s/ ROBERT M. TAKASUGI
ROBERT M. TAKASUGI
United States District Judge

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the court for hearing on July 19, 1993, on the motion by plaintiffs Santa Ana City Employee Association and Barbara Lambert for summary judgment on defendants' claims of qualified immunity, and the court having considered the pleadings and other documents filed herein and argument of counsel, the court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The court hereby incorporates by reference its November 24, 1992, findings of fact as if fully set forth herein.

2. Defendants Robert Richard ("Richard") and David Ream ("Ream") maintain that they are entitled to qualified immunity since they reasonably believe that their conduct was lawful.

3. The facts and circumstances which Richard and Ream submit in support of their claims to qualified immunity are the following: (a) prior to October, 1990, library staff "were making a political issue" of their dissatisfaction with Richard's management style; (b) Union President Eddie Bentley called Richard a "Hitler and a dictator"; (c) an anti-Richard petition drive was under way; (d) anti-Richard articles appeared in local newspapers and a national library periodical; (e) protesters carried placards at the October 1, 1990, council meeting; (f) at the council meeting, the City Manager told the City Council that he would report to the Council about the subject of the complaints; (g) Lambert should have followed the proper grievance procedure.

Any finding of fact which may be deemed a conclusion of law is hereby incorporated into the Conclusions of Law below, and any conclusion of law which may be deemed a finding of fact is hereby incorporated into the Findings of Fact above.

CONCLUSIONS OF LAW

1. The court hereby incorporates by reference its November 24, 1992, conclusions of law as if fully set forth herein.

2. To overcome the defendants' claims of qualified immunity, plaintiffs must establish that the conduct at issue violated rights that were clearly established at the time of defendants' misconduct. If plaintiffs meet this burden, the burden shifts to the defendants to establish that a reasonable public official could have believed that his conduct was lawful. *Elder v. Holloway*, 975 F.2d 1388, 1394 (9th Cir. 1992); *Act Up!/Portland v. Bagley*, 971 F.2d 298, 301 (9th Cir. 1992).

3. Lambert's right under the first amendment to be free from discipline for her speech before the City Council regarding a matter of public concern was clearly established at the time Richard, with Ream's subsequent ratification, issued to Lambert the letter of reprimand. *Burgess v. Pierce County*, 918 F.2d 104, 105-06 (9th Cir. 1990); *Roth v. Veteran's Administration of Government of U.S.*, 856 F.2d 1401, 1405 (9th Cir. 1988); *Anderson v. Central Point School District*, 764 F.2d 505 (9th Cir. 1984).

4. Defendants' contention that their conduct was reasonable based upon Lambert's failure to follow the specific grievance procedure for library employees is without merit. *See Burgess, supra*, 918 F.2d 104, 106 (9th Cir. 1990), *citing Knapp v. Whitaker*, 757 F.2d 827, 845-46 (7th Cir. (1985) (public employee speech to school board on matter of public concern protected despite "chain of command" administrative policy).

5. Lambert's speech was made during the public comments period of the City Council meeting and was pursuant to a request from the President of the Santa Ana

City Employees Association. It was unreasonable for Richard or Ream to conclude that Lambert had engaged in "insubordinate" action when the issue of Richard's mismanagement had been greatly debated and was clearly a matter of serious concern among the Santa Ana City Council, the Library Department, and the Mayor's Office.

6. The letter of reprimand appears to have been issued in retaliation for Lambert's speaking out against Richard and not for any disruption to the workplace caused by Lambert's actions.

7. It was unreasonable, as a matter of law, for Richard to reprimand Lambert for speaking out on a matter of public concern, and it was likewise unreasonable, as a matter of law, for Ream to ratify the reprimand.

8. Summary judgment should be granted in favor of plaintiffs on defendants' claims of qualified immunity.

Dated: 7/26/93

/s/ ROBERT M. TAKASUGI
ROBERT M. TAKASUGI
United States District Judge